

1 IN THE UNITED STATES BANKRUPTCY COURT FOR
2 THE DISTRICT OF PUERTO RICO

3 IN RE:

4 FERNANDO VIGIL FERNANDEZ
5 CLARISSA PIOVANETTI LOPEZ DE
6 VICTORIA

7 Debtor(s)

8 UNITED STATES FIDELITY AND
9 GUARANTY COMP

10 Plaintiff

11 FERNANDO VIGIL FERNANDEZ
12 CLARISSA PIOVANETTI LOPEZ DE
13 VICTORIA

Defendant(s)

CASE NO. 12-08024 ESL
CHAPTER 7

ADVERSARY NO. 13-00140 ESL

FILED & ENTERED ON 11/27/2013

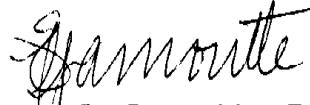
13 AMENDED ORDER

14 The motion filed by Plaintiff (docket #15) is hereby DENIED.
15 Plaintiff's motion again recounts the travel of the bankruptcy case but
16 fails to address the reason(s) or cause(s) that justify the failure to
17 serve summons on the defendants within 120 days, as required by Fed. R.
18 Civ.P. 4(m), made applicable to adversary proceedings by Fed. R. Bankr.
19 P. 7004. It is uncontested, and plaintiff so admitted at the pretrial
20 held on November 15, 2013, that service on the defendants had not been
21 performed. As stated at the hearing, a cross reference in the bankruptcy
22 docket to the filing of a related adversary proceeding, which was
23 electronically noticed to debtor' counsel, does not constitute service on
24 the defendants. The court notes that the pretrial scheduled for October
25 18, 2013 was indeed rescheduled to November 15, 2013, but was so at the
request of the plaintiff. Intensity of contested matters in the
bankruptcy petition does not excuse the failure to serve summons of the

1 complaint objecting to the dischargeability of plaintiff's claim, which
2 is a time sensitive action. The court further notes that plaintiff did
3 not request an extension of time to serve summons prior to the expiration
4 of the 120-day period. Dismissal under Rule 4(m) is generally without
5 prejudice, and this court is not specifically deviating from said
6 principle. However, if dismissal affects the timeliness of a subsequent
7 filing, is a matter to be raised and considered if and when another
8 action is filed. Judgment will be entered dismissing the adversary
9 proceeding for failure to serve summons within 120 days as required by
10 Fed. R. Civ.P. 4(m), made applicable to adversary proceedings by Fed. R.
11 Bankr. P. 7004.

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13 SO ORDERED.

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15 San Juan, Puerto Rico, this 27 day of November, 2013.

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19 Enrique S. Lamoutte Inclan
U.S. Bankruptcy Judge

20 CC: DEBTOR(S)
21 FERNANDO VIGIL FERNANDEZ
22 CLARISSA PIOVANETTI LOPEZ DE VICTORIA
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